

2. Inspection Provisions

153. Direct Cases. Lincoln, Nevada, Pacific, NYNEX, and SNET inspect interconnectors' space and facilities following initial installation of equipment at varying periodic intervals.⁶⁵¹ Rochester's tariff does not address inspections.⁶⁵² Lincoln provides for periodic and irregular inspections for safety and tariff verification purposes.⁶⁵³ Nevada, Pacific, Lincoln and SNET state that they provide interconnectors reasonable prior notice, and do not charge an inspection fee.⁶⁵⁴ Lincoln and SNET state that they allow interconnectors to be present at inspections, and Nevada states that it conducts most inspections from exterior walkway areas.⁶⁵⁵ NYNEX states that it does not charge interconnectors for inspections unless an inspection reveals that an interconnector is not complying with the terms and conditions of the tariff.⁶⁵⁶

154. Pacific objects to limiting inspections to initial inspections and annual inspections thereafter. Pacific argues that these limitations are unreasonable because it is also necessary to conduct monthly fire and safety inspections.⁶⁵⁷ Pacific opposes Teleport's proposed two-week advance notice requirement, stating that such a requirement ignores the fact that state and local authorities provide shorter notice when they request inspections.⁶⁵⁸ Pacific also posits that, if given advance warning, interconnectors could disguise deficiencies that could later cause problems.⁶⁵⁹

155. Oppositions. ALTS, TDL, and Teleport agree that LECs may inspect interconnectors' space and facilities at the initial installation, upon installation of additional equipment, upon reconfiguration of equipment or space, and in emergencies.⁶⁶⁰ They argue

⁶⁵¹ Lincoln Direct Case at 28; Nevada Direct Case at 28-29; Pacific Direct Case at 85-86; NYNEX, Appendix O at 1; SNET Direct Case at 22.

⁶⁵² Rochester Direct Case at 14.

⁶⁵³ Lincoln Direct Case at 28.

⁶⁵⁴ Nevada Direct Case at 28-29; Pacific Direct Case at 85-86; Lincoln Direct Case at 28; SNET Direct Case at 22.

⁶⁵⁵ Lincoln Direct Case at 28; SNET Direct Case at 22; Nevada Direct Case at 28-29.

⁶⁵⁶ NYNEX Direct Case, Appendix O at 1.

⁶⁵⁷ Pacific Direct Case at 86-87.

⁶⁵⁸ *Id.*

⁶⁵⁹ *Id.* at 87.

⁶⁶⁰ ALTS Opposition at 39; TDL Opposition at 30; Teleport Opposition, Appendix B at 34.

that LECs should be limited in the number of subsequent inspections that they may perform and that LECs be required to provide interconnectors with advance notice.⁶⁶¹ TDL and Teleport urge that LECs be required to provide at least 15 days' notice and be limited to one inspection every 12 months.⁶⁶² ALTS contends that the LECs' provisions raise potential for abuse through harassment, added costs, and disclosure of confidential information.⁶⁶³ ALTS objects to inspections unless the LEC agrees to suitable protection of proprietary information.⁶⁶⁴

156. According to Teleport, the LECs do not define, *inter alia*, routine inspections, the reason for such inspections, what is measured during an inspection, or what standards are used for evaluating the results of an inspection.⁶⁶⁵ Moreover, Teleport argues that the LECs do not justify imposing the costs for such inspections on the interconnectors. Teleport states that a LEC should only charge for inspections if it finds that the interconnector poses an immediate and significant threat of harm to the LEC's network.⁶⁶⁶ Teleport warns that allowing LECs discretion to charge interconnectors for inspections and violations could give LECs an incentive to increase interconnectors' costs through fines and penalties.⁶⁶⁷

157. Rebuttals. In response to Teleport's opposition, Pacific contends that its tariff provides for inspection of equipment in the cage area only at the time of initial inspection and at the time of any subsequent additions to equipment.⁶⁶⁸ According to Pacific, periodic inspections are required to assure ongoing compliance with safety, fire, environmental, and security requirements.⁶⁶⁹ Pacific states that it conducts the majority of inspections from outside the interconnection space.⁶⁷⁰ While Pacific does not object to the presence of a customer's representative, it will not postpone or reschedule an inspection if a representative

⁶⁶¹ *Id.*

⁶⁶² TDL Opposition at 30; Teleport Opposition, Appendix B at 34.

⁶⁶³ ALTS Opposition at 38-39.

⁶⁶⁴ *Id.* at 39.

⁶⁶⁵ Teleport Opposition, Appendix B at 33-34.

⁶⁶⁶ *Id.*

⁶⁶⁷ *Id.*

⁶⁶⁸ Pacific Rebuttal at 72.

⁶⁶⁹ *Id.* at 72-73.

⁶⁷⁰ *Id.* at 73.

cannot be present.⁶⁷¹ Finally, Pacific notes that it cannot regulate the frequency of inspections by authorities.⁶⁷²

3. Insurance Requirements

a. Levels and Types of Insurance

158. Direct Cases. All six LECs that provide interstate expanded interconnection under tariffs subject to this investigation require interconnectors to carry general liability insurance ranging from \$1 million to \$5 million.⁶⁷³ With the exception of BellSouth and Ameritech which require interconnectors to maintain general liability insurance coverage of \$25 million and \$10 million, respectively, all the other LECs with tariffs subject to this investigation also require general liability insurance in amounts ranging from \$1 million to \$5 million.⁶⁷⁴

159. In addition, Rochester, Lincoln and NYNEX require interconnectors to carry excess liability coverage of \$5 million; SNET requires \$10 million.⁶⁷⁵ In comparison, the eight LECs that discontinued providing physical collocation required interconnectors to maintain excess liability policies in amounts ranging between \$5 million to \$10 million, except CBT, which required \$20 million.⁶⁷⁶

160. All six LECs also require interconnectors to maintain statutory levels for workers compensation and require employer's liability insurance in the following amounts:

⁶⁷¹ *Id.*

⁶⁷² *Id.*

⁶⁷³ Lincoln Direct Case at 24; Nevada Direct Case at 23; NYNEX Direct Case, Appendix K at 1; Pacific Direct Case at 79-81; Rochester Direct Case at 12, *citing* Rochester Tariff F.C.C. No. 1, Section 6.9.2(C); SNET Direct Case at 19-20.

⁶⁷⁴ BellSouth Direct Case, Exhibit 6 at 11-12; Ameritech Direct Case at 30; Bell Atlantic Direct Case, Attachment B at 57; CBT Direct Case at 10-11; GTE Direct Case at 49-50; SWB Direct Case at 43; US West Direct Case at 124-125; United and Central Direct Case at 25-26.

⁶⁷⁵ Rochester Tariff F.C.C. No. 1, Section 6.9.2(C); Lincoln Direct Case at 24; NYNEX Direct Case, Appendix K at 1.

⁶⁷⁶ Ameritech Direct Case at 30; BellSouth Direct Case, Exhibit 6 at 11-12; Bell Atlantic Direct Case, Attachment B at 57; CBT Direct Case at 10-11; GTE Direct Case at 49-50; SWB Direct Case at 43; US West Direct Case at 124-125; United and Central Direct Case at 25-26.

Pacific and Nevada, \$1 million; Lincoln, NYNEX, Rochester, and SNET, \$2 million.⁶⁷⁷ In comparison, the LECs that discontinued providing physical collocation required interconnectors to maintain employer's liability insurance policies in amounts ranging from \$0.5 million to \$2 million, except CBT, which required \$5 million.⁶⁷⁸

161. Pacific and Nevada require interconnectors to maintain \$5 million in automobile liability insurance for automobiles used on their premises; Rochester requires \$3 million; Lincoln requires \$1 million; and SNET requires the level of insurance coverage mandated by state law.⁶⁷⁹ NYNEX's tariff does not require automobile liability coverage.⁶⁸⁰ In comparison, most of the LECs that discontinued providing physical collocation required automobile liability, either for \$1 million or the level of insurance mandated by state law.⁶⁸¹

162. Lincoln contends that its commercial general liability policy is reasonable because of the disparity of investment that Lincoln and the interconnectors have at risk and the uncertainty of the interconnector's ability to manage risks.⁶⁸² According to Lincoln, it has a larger public obligation to provide service and must have financial assurance that the customer will not damage the network.⁶⁸³ Pacific, Nevada and SNET argue that their own coverage substantially exceeds the levels and types of insurance required of interconnectors.⁶⁸⁴ NYNEX states that the amount it requires interconnectors to provide for general and excess liability are the same amounts that are required under state tariffs.⁶⁸⁵ Rochester claims that its insurance requirements are the standard coverage required in many commercial leases and,

⁶⁷⁷ Pacific Direct Case at 79-81; Nevada Direct Case at 23; Lincoln Direct Case at 24; NYNEX Direct Case, Appendix K at 1; Rochester Direct Case at 12, *citing* Rochester Tariff F.C.C. No. 1, Section 6.9.2(C); SNET Direct Case at 19-20.

⁶⁷⁸ Ameritech Direct Case at 30; BellSouth Direct Case, Exhibit 6 at 11-12; Bell Atlantic Direct Case, Attachment B at 57; CBT Direct Case at 10-11; GTE Direct Case at 49-50; SWB Direct Case at 43; US West Direct Case at 124-125; United and Central Direct Case at 25-26.

⁶⁷⁹ Pacific Direct Case at 79-81; Nevada Direct Case at 23; Rochester Direct Case at 12, *citing* Rochester Tariff F.C.C. No. 1, Section 6.9.2 (C); Lincoln Direct Case at 24; SNET Direct Case at 19-20.

⁶⁸⁰ NYNEX Direct Case, Appendix K at 1.

⁶⁸¹ Ameritech Direct Case at 30; Bell Atlantic Direct Case, Attachment B at 57; CBT Direct Case at 10-11; GTE Direct Case at 49-50; SWB Direct Case at 43; US West Direct Case at 124-125; United and Central Direct Case at 25-26.

⁶⁸² Lincoln Direct Case at 24.

⁶⁸³ *Id.*

⁶⁸⁴ Pacific Direct Case at 80-81; Nevada Direct Case at 24; SNET Direct Case at 20.

⁶⁸⁵ NYNEX Direct Case, Appendix K at 1.

for the most part, reflect statutory requirements.⁶⁸⁶

163. Oppositions. MFS states that the insurance requirements of Ameritech (\$10 million), BellSouth (\$25 million) and Pacific (\$5 million) are excessive and unjustified.⁶⁸⁷ Moreover, MFS asserts that these LECs' requirements depart from the industry standard of \$1 million to \$2 million in coverage, and that Ameritech, BellSouth, and Pacific should be required to amend their tariff to require insurance coverage not exceeding \$2 million.⁶⁸⁸

164. PUCO, Sprint, and Teleport claim that the LECs are tariffing excessive insurance requirements which bear little relationship to the risk arising from an interconnector occupying space in a LEC central office.⁶⁸⁹ Teleport contends that a physical collocation arrangement requires only the addition of a few racks of multiplexing equipment and does not, therefore, create additional risk justifying excessive insurance coverage.⁶⁹⁰ MFS and Sprint further argue that LECs should not require the interconnectors to cover the catastrophic loss of the entire central office.⁶⁹¹ Finally, MFS states that the LECs maintain their own coverage for such contingencies.⁶⁹² PUCO argues that Ameritech did not justify its requirement that interconnectors carry automobile insurance.⁶⁹³

165. Rebuttals. NYNEX asserts that the levels of insurance it requires are among the lowest mandated by any of the LECs and are reasonable in light of NYNEX's exposure to risk.⁶⁹⁴ Pacific disputes MFS's claim that levels of insurance over \$2 million are excessive, noting that an interconnector could cause the catastrophic loss of an entire central office.⁶⁹⁵ Further, Pacific denies that MFS's proposed coverage requirement is an industry standard. Pacific argues that the determination of an adequate level of coverage varies on the basis of

⁶⁸⁶ Rochester Direct Case at 12.

⁶⁸⁷ MFS Opposition at 23-24.

⁶⁸⁸ *Id.* at 24.

⁶⁸⁹ PUCO Opposition at 6; Sprint Opposition, Appendix A at 17.

⁶⁹⁰ Teleport Opposition, Appendix B at 21.

⁶⁹¹ MFS Opposition at 23-24, 37-38; Sprint Opposition, Appendix B at 21.

⁶⁹² MFS Opposition at 23-24, 37-38.

⁶⁹³ PUCO Direct Case at 6.

⁶⁹⁴ NYNEX Rebuttal at 11.

⁶⁹⁵ Pacific Rebuttal at 60.

differences in the location and value of the insured property.⁶⁹⁶

166. Pacific also responds to Teleport's opposition by arguing that it weighed the degree of risk added by collocation in developing its \$5 million coverage requirement. According to Pacific, Teleport ignores the risk associated with the presence of personnel not under Pacific's direct control. In addition, Pacific observes that neither MCI nor Sprint, companies with greater experience in evaluating risks in the provision of telecommunications service, object to the level of Pacific's insurance coverage.⁶⁹⁷

b. Self-insurance

167. Direct Cases. NYNEX and Pacific object to self-insurance, although Pacific states that it would allow companies that have obtained state approval with respect to workers compensation to self-insure.⁶⁹⁸ Nevada states that it permits self-insurance with regard to workers compensation claims only, and only when customers have obtained proper authorization.⁶⁹⁹ Rochester states that it does not oppose self-insurance in "appropriate circumstances."⁷⁰⁰ Lincoln's states that it permits self-insurance, provided that the program is satisfactory to Lincoln.⁷⁰¹ SNET does not address this issue.

168. NYNEX and Pacific consider it inadvisable to conduct a financial review of their competitors to determine whether to allow self-insurance.⁷⁰² NYNEX states that decisions determining the financial condition of the interconnector could result in disputes between the LECs and the interconnectors in cases where the LEC determines that the interconnector does not qualify financially to self-insure.⁷⁰³ Additionally, NYNEX states, the interconnector's financial condition may change over time. Thus, while the interconnector may have sufficient resources to self-insure at one point in time, NYNEX notes, it may not qualify financially at a later time.⁷⁰⁴ Pacific argues that evaluating the financial condition of

⁶⁹⁶ *Id.* at 60. As an attachment to its rebuttal, Pacific submits insurance industry documentation reflecting the degree of risk in doing business in California. *Id.*, Attachment A.

⁶⁹⁷ Pacific Rebuttal at 61.

⁶⁹⁸ NYNEX Direct Case, Appendix K at 2; Pacific Direct Case at 81-82.

⁶⁹⁹ Nevada Direct Case at 24.

⁷⁰⁰ Rochester Direct Case at 12.

⁷⁰¹ Lincoln Direct Case at 24.

⁷⁰² NYNEX Direct Case, Appendix K at 2; Pacific Direct Case at 81-82.

⁷⁰³ NYNEX Direct Case, Appendix K at 2.

⁷⁰⁴ *Id.*

interconnectors will expose Pacific to claims of discrimination.⁷⁰⁵ Additionally, Pacific maintains that allowing the most financially secure customers to self-insure provides those interconnectors with a competitive advantage over other customers.⁷⁰⁶

169. Oppositions. Teleport argues that the Commission should require all carriers to allow interconnectors to self-insure, subject to reasonable limitations.⁷⁰⁷ According to Teleport, the refusal by Pacific and NYNEX to allow interconnectors to self-insure handicaps the interconnectors' ability to compete against the LECs, while providing no public interest benefit.⁷⁰⁸ Moreover, Teleport argues that although Pacific and NYNEX claim that allowing interconnectors to self-insure would require LECs to review financial data which the interconnectors may not wish to share with a competitor, such a decision should be left to the interconnector.⁷⁰⁹ Teleport also posits that there may well be far less intrusive methods that would satisfy any legitimate needs of the LECs for assurance regarding the financial capability of the interconnector.⁷¹⁰

170. Rebuttals. NYNEX argues that it should not be required to permit self-insurance because it would be inappropriate for NYNEX to make judgments on the financial condition of interconnectors.⁷¹¹ NYNEX also contends that requiring a reasonable amount of insurance is the most effective and equitable way to handle liability concerns.⁷¹² Pacific maintains that it wishes to avoid allegations of discrimination or disputes regarding its criteria for evaluating an interconnector's financial stability, and thus Pacific urges the Commission to reject Teleport's suggestion to require LECs to allow interconnectors to self-insure.⁷¹³

c. Underwriters

171. Direct Cases. Most LECs require the interconnectors' general liability carrier to have particular minimum rating levels in order to ensure adequate coverage by reputable

⁷⁰⁵ Pacific Direct Case at 82.

⁷⁰⁶ *Id.*

⁷⁰⁷ Teleport Opposition, Appendix B at 22.

⁷⁰⁸ *Id.*

⁷⁰⁹ *Id.*

⁷¹⁰ *Id.*

⁷¹¹ NYNEX Rebuttal at 11-12.

⁷¹² *Id.*

⁷¹³ Pacific Rebuttal at 62.

insurance carriers. SNET and NYNEX require at least an "AA-12" rating.⁷¹⁴ Nevada and Pacific state that they require at least a best insurance "A" rating, and Pacific notes that its own insurance companies must have "A+" ratings.⁷¹⁵ Lincoln requires an insurer to be licensed in the state where expanded interconnection is offered and that the company be satisfactory to Lincoln.⁷¹⁶ Rochester's tariff does not specify a rating requirement, but Rochester notes that it requires interconnectors to carry insurance with the same rating Rochester requires of its own insurers.⁷¹⁷

172. Pacific and NYNEX also note that their own insurance companies have "A+" ratings.⁷¹⁸ Pacific asserts that there is no connection between a company's rating and the premium it charges, and thus no basis for the Commission to find it unreasonable to require a minimum acceptable rating.⁷¹⁹

173. Oppositions. Teleport states that interconnectors, like the LECs, have a vested interest in obtaining insurance from a reputable insurer with an ability to pay claims, that selection of an insurance company is a business decision that should be left to the interconnector, and that the Commission should, therefore, prohibit LECs from requiring interconnectors to use insurers with particular rating levels.⁷²⁰ ALTS argues that the high ratings required by some LECs are likely to create barriers to entry and are not justified because other LECs have lower and more reasonable requirements.⁷²¹

174. Rebuttals. In response to Teleport's complaint that the LECs' rating requirements are not uniform, Pacific contends that each company must make a decision reflecting the degree of risk it deems reasonable.⁷²² Further, Pacific asserts, ratings are necessary because an interconnector interested in minimizing its short run costs may choose coverage at a low rate from a company unable to pay a large claim.⁷²³ Pacific states that,

⁷¹⁴ NYNEX Direct Case, Appendix K at 2; SNET Tariff F.C.C. 39, Section 18.4.

⁷¹⁵ Nevada Direct Case at 25-26; Pacific Direct Case at 82.

⁷¹⁶ Lincoln Direct Case at 24.

⁷¹⁷ Rochester Direct Case at 12.

⁷¹⁸ Pacific Direct Case at 82; NYNEX Direct Case, Appendix K at 2.

⁷¹⁹ Pacific Direct Case at 82.

⁷²⁰ Teleport Opposition, Appendix B at 23.

⁷²¹ ALTS Opposition at 37-38.

⁷²² Pacific Rebuttal at 63.

⁷²³ *Id.*

contrary to ALTS's assertion, an insurance carrier rating is necessary and does not, therefore, present an artificial barrier to entry.⁷²⁴

d. Effective Date of Insurance

175. Direct Cases. All six LECs that continue to offer physical collocation throughout this investigation require that interconnectors' insurance be effective on or before the date the interconnector occupies the LEC's premises.⁷²⁵ In addition, Lincoln, SNET, and NYNEX, require proof of the interconnectors' insurance prior to the date they commence construction of an interconnector's cage.⁷²⁶ SNET states that it requires the interconnector to provide a certificate of insurance prior to commencement of construction, naming SNET as an additional insured on the interconnector's insurance policies.⁷²⁷ SNET states that proof of insurance prior to construction is reasonable "since it can be expected [that] the customer and/or customer equipment will be on the premises upon commencement of the work."⁷²⁸ Lincoln does not require the insurance to be effective prior to commencement of construction because, according to Lincoln, "the greater risk to the public network resides in the operation of the interconnector's equipment, not the mere existence of interconnection space in an office."⁷²⁹

176. Pacific states it will accept a copy of the policy or certificate of insurance as proof.⁷³⁰ Nevada and Pacific will accept a copy of the insurance policy or a certificate of insurance as proof of coverage.⁷³¹ According to these carriers, this verification provision is not burdensome.⁷³²

177. Opposition. Teleport proposes that insurance or self-insurance should not be required to take effect prior to an interconnector occupying its space and advocates requiring interconnectors to provide proof of insurance or a certificate of insurance, as is customary in

⁷²⁴ *Id.* at 63-64.

⁷²⁵ SNET Direct Case at 20; Lincoln Direct Case at 24, NYNEX Direct Case, Appendix K at 3, Nevada Direct Case at 26; Pacific Direct Case at 82; Rochester Tariff F.C.C. No. 1, Section 7.8.2(C).

⁷²⁶ Lincoln Direct Case at 24; SNET Direct Case at 20; NYNEX Direct Case, Appendix K at 3.

⁷²⁷ SNET Direct Case at 20.

⁷²⁸ *Id.*

⁷²⁹ Lincoln Direct Case at 24.

⁷³⁰ Pacific Direct Case at 82-83.

⁷³¹ Nevada Direct Case at 26; Pacific Direct Case at 82-83.

⁷³² Nevada Direct Case at 26; Pacific Direct Case at 82-83.

the industry in general.⁷³³ Teleport adds that interconnectors should not be required to provide a copy of the policy itself as proof of insurance coverage, because the policy may disclose confidential information, if an interconnector subscribes to a single policy covering multiple locations.⁷³⁴

178. Rebuttal. Pacific maintains that insurance must be in effect on the date service begins because the customers' employees will have access to the central office.⁷³⁵ In response to Teleport's concern that its policy may include confidential information, Pacific states that it will amend its tariff to require customers to provide only the pertinent portions of the policy, including the details on terms and conditions of the policy and an indication that the amount of coverage is at an acceptable level.⁷³⁶

4. LECs' Liability Provisions

179. Direct Cases. Pacific, Rochester, Nevada, and SNET state that the same liability provisions that apply to their other customers of interstate access service also apply to their expanded interconnection customers.⁷³⁷ Lincoln, Nevada, Pacific, NYNEX, and SNET hold themselves liable to their interconnector-customers only for willful misconduct, while holding their interconnector-customers to a higher standard of care.⁷³⁸ In addition, Pacific, Lincoln, NYNEX, and Rochester have tariff provisions requiring interconnectors to indemnify them against all claims and liabilities arising out of the operation of their facilities in the central office.⁷³⁹ Pacific also includes provisions in its tariff holding interconnectors liable for losses from interconnector activities for at least three years from the date of termination, cancellation, modification, or rescission of the physical collocation arrangement.⁷⁴⁰

180. All six LECs that continued to provide physical collocation service throughout

⁷³³ Teleport Opposition, Appendix B at 24.

⁷³⁴ *Id.*

⁷³⁵ Pacific Rebuttal at 67.

⁷³⁶ *Id.*

⁷³⁷ Pacific Direct Case at 83; Rochester Direct Case at 13; Nevada Direct Case at 26; SNET Direct Case at 21.

⁷³⁸ Lincoln Direct Case at 25, *citing* Tariff F.C.C. No.3, Section 8.2.5; Nevada Direct Case at 26, *citing* Tariff F.C.C. No. 1, Section 18.5(B)(h); Pacific Tariff Direct Case at 83-84; NYNEX Direct Case, Appendix L at 1; SNET Direct Case at 21.

⁷³⁹ Pacific Tariff F.C.C. No. 128, Section 2.1.3; Lincoln Tariff F.C.C. No. 3, Section 8.2.5(B); NYNEX Direct Case, Appendix L at 1; Rochester Tariff F.C.C. No. 1, Section 2.1.3.

⁷⁴⁰ Pacific Rebuttal at 69.

this investigation state that holding interconnectors to a stricter standard of care is appropriate. Lincoln argues that interconnectors should be held to a stricter standard of care because they lack experience with risk management and safety procedures, and that in the event of damage to the central office, Lincoln is subject to a greater financial risk than interconnectors.⁷⁴¹ Pacific and Nevada note that it is well-established that limitations on a telephone company's liability serve to restrict the cost of damage awards against the company and are, therefore, essential to maintaining its costs and rates at reasonable levels.⁷⁴² NYNEX, Pacific and Nevada state that the relationship between the LEC and the interconnector is analogous to a landlord-tenant relationship and they argue that landlords of commercial real estate typically require their tenants to assume broader liability in order to protect the landlord's investment against the risk of damage by its tenants.⁷⁴³ SNET states that because the interconnector is using SNET's facilities but SNET is not using the interconnector's facilities, the standard liability provision traditionally applicable to common carrier service should be applied.⁷⁴⁴

181. Oppositions. The commenters generally oppose the LECs' liability provisions that assign to the interconnector full liability for any loss arising out of simple negligence, but waive such liability for themselves.⁷⁴⁵ ALTS maintains that, at a minimum, no LEC should be relieved of liability for willful or grossly negligent acts or omissions, no party should indemnify the other against the results of its own negligence, and all provisions should have mutual application.⁷⁴⁶ ALTS rejects the LECs' argument that the lack of reciprocal standards is justified because such provisions are not contained in other service tariffs.⁷⁴⁷ ALTS argues that liability provisions in typical service tariffs are irrelevant because, unlike interconnectors, typical access customers are unlikely to suffer harm due to the actions of the LEC.⁷⁴⁸

182. Teleport and Sprint reject the LECs' use of a landlord-tenant analogy to justify shifting liability to the interconnector.⁷⁴⁹ Teleport argues that the LECs differ from traditional

⁷⁴¹ Lincoln Direct Case at 25.

⁷⁴² Pacific Direct Case at 84; Nevada Direct Case at 27.

⁷⁴³ NYNEX Direct Case, Appendix L at 1-2; Pacific Direct Case at 84; Nevada Direct Case at 27.

⁷⁴⁴ SNET Direct Case at 21.

⁷⁴⁵ See, e.g., ALTS Opposition at 38; Sprint Opposition, Appendix A at 18-20; TDL Opposition at 29; Teleport Opposition, Appendix B at 26-27; MFS Opposition at 24. MFS notes that some LECs apparently waive their own liability for gross negligence or willful misconduct. MFS Opposition at 24.

⁷⁴⁶ ALTS Opposition at 38.

⁷⁴⁷ *Id.*

⁷⁴⁸ *Id.*

⁷⁴⁹ Teleport Opposition at B-26-27; Sprint Opposition, Appendix A at 18.

landlords because they have a monopoly on the space sought by interconnectors and engage in direct competition with the interconnectors.⁷⁵⁰ Sprint argues that a landlord would be responsible for damages to the leased premises, resulting from its own negligence.⁷⁵¹

183. MFS objects to the LECs disparate liability provisions, arguing that competitive access providers and interexchange carriers are not customers in the traditional sense, but are "co-carriers," operating interconnected networks with the same service obligations and concerns about quality and cost that the LECs have, and that parity among the network operators is essential if the Commission's collocation policies are to have their intended pro-competitive effect.⁷⁵² MFS also rejects as without merit the LECs' arguments that sharing reciprocal responsibility for gross negligence and willful misconduct with the collocators will adversely affect ratepayers.⁷⁵³ MFS states that, because "the amount and cost of the facilities a collocator may place in a central office are limited, any liability attached to LEC-inflicted damage upon such facilities is similarly limited" and, states MFS, the LECs retain adequate levels of insurance to cover any foreseeable claim for damages arising out of a collocation arrangement.⁷⁵⁴ MFS argues that LECs should not be allowed to use collocation as a means of imposing liability for consequential damages on collocators, and that potential liability should end when a collocator's arrangement ends and its facilities are removed from the central office.⁷⁵⁵ Specifically, MFS, along with Teleport, oppose tariff provisions that impose liability upon collocators for three-years after the arrangement is terminated.⁷⁵⁶

184. Rebuttals. NYNEX asserts that because it will exercise no supervisory control over interconnector activities, it is appropriate that interconnectors indemnify NYNEX against damages arising from their activities.⁷⁵⁷ Rochester states that its liability provisions apply equally to all customers and have been included in its tariff for years.⁷⁵⁸ In response to MFS and ALTS, Pacific Bell insists it does not waive its liability for willful misconduct.⁷⁵⁹

⁷⁵⁰ Teleport Opposition, Appendix B at 26-27.

⁷⁵¹ Sprint Appendix A at 18.

⁷⁵² MFS Opposition at 24-25.

⁷⁵³ MFS Opposition at 25.

⁷⁵⁴ *Id.*

⁷⁵⁵ *Id.* at 26.

⁷⁵⁶ MFS Opposition at 26 n.49; Teleport Opposition, Appendix B at 27.

⁷⁵⁷ NYNEX Rebuttal at 10.

⁷⁵⁸ Rochester Rebuttal at 5.

⁷⁵⁹ Pacific Rebuttal at 68.

185. Pacific argues that its liability provisions are similar to those applied to interstate access customers in the past and that ALTS is seeking more favorable treatment than is accorded other access customers.⁷⁶⁰ Pacific maintains that, as in a landlord-tenant relationship, it is justified in allocating risk to the interconnector.⁷⁶¹ Pacific further rejects MFS's argument that interconnectors and interexchange carriers are "co-carriers," stating that IXC's, unlike interconnectors, have broader public interest responsibilities because they have a legal obligation to provide service universally to all qualified customers.⁷⁶² Pacific also rejects MFS's request that the Commission require LECs to waive interconnector-liability for consequential damages.⁷⁶³ According to Pacific, this requirement would eliminate a tariff provision that holds an interconnector-customer liable for credit allowances that must be given to Pacific's customers as a result of damage or outages caused by willful misconduct or negligence of interconnectors.⁷⁶⁴ Pacific asserts that this provision is necessary for interconnectors (as opposed to other access customers) because interconnectors are physically present in central offices.⁷⁶⁵ Finally, Pacific asserts that it is reasonable to hold customers liable for damages caused by their actions or inactions, even when that liability accrues after termination of service because, in the absence of such a provision, customers would have the incentive to terminate service to escape liability.⁷⁶⁶

5. Termination of Service

186. SNET, Pacific, NYNEX, and Nevada state that all terms in their tariffs are "material" terms, and violations of these terms warrant termination of an expanded interconnection arrangement.⁷⁶⁷ Nevada states that it may terminate an interconnection arrangement if the interconnector fails to comply with the insurance coverage requirements or

⁷⁶⁰ *Id.* at 69. ALTS objects to Pacific's requirement that generally requires interstate access service customers to indemnify it against any claims "arising out of any act or omission of the [customer] in the course of using services provided pursuant to [the] tariff." *Id.*

⁷⁶¹ Pacific Rebuttal at 65-66.

⁷⁶² *Id.* at 67.

⁷⁶³ *Id.* at 67. Pacific's tariff holds interconnectors liable for credit allowances that must be given to Pacific Bell customers as a result of damages or outages caused by interconnectors' willful misconduct or negligence.

⁷⁶⁴ *Id.* at 67-68.

⁷⁶⁵ *Id.*

⁷⁶⁶ *Id.* at 69.

⁷⁶⁷ SNET Direct Case at 16; Pacific Direct Case at 74; NYNEX Direct Case, Appendix H at 2; Nevada Direct Case at 19.

fails to ensure that its equipment will not pose an unreasonable risk to Nevada's service.⁷⁶⁸ Pacific states that it reserves the right to terminate a collocation agreement where the central office is closed, sold, or subject to eminent domain, or where the interconnector fails to pay a tariffed fee or charge, breaches security, fails to interconnect within 180 days of occupancy, or offers service in conflict with any rule, order, regulation, or judicial or administrative decision.⁷⁶⁹ NYNEX's tariff permits termination of service if the interconnector files for bankruptcy or violates state or federal law.⁷⁷⁰ SNET and Rochester reserve the right to terminate service for nonpayment or for "unlawful" or "abusive" use of the service.⁷⁷¹ Lincoln terminates service for default or breach of material terms or conditions of expanded interconnection and Lincoln's tariff states that either party has the right to terminate in the event of the other party's bankruptcy, liquidation, insolvency, or receivership.⁷⁷² None of the six LECs currently offering physical collocation impose charges for termination of service beyond any charges accrued prior to the date of termination.

187. NYNEX, SNET, Pacific, Nevada, and Lincoln provide notice to interconnectors prior to termination.⁷⁷³ The notice period for termination ranges from 15 days to six months, depending on the reason for termination.⁷⁷⁴ NYNEX permits the interconnector to terminate the collocation arrangement on 60 days' notice for any reason.⁷⁷⁵ Pacific requires 30 days' notice from its customers seeking to terminate a collocation arrangement.⁷⁷⁶ If an interconnector has breached Lincoln's tariff provisions, Lincoln will terminate service on 60 days' notice.⁷⁷⁷ Lincoln does not require any advance notice of termination by the interconnectors.⁷⁷⁸ SNET requires interconnectors to provide six months notice of their

⁷⁶⁸ Nevada Direct Case at 19.

⁷⁶⁹ Pacific Direct case at 74.

⁷⁷⁰ NYNEX Direct Case at 17.

⁷⁷¹ SNET Direct Case at 16; Rochester Direct Case at 19.

⁷⁷² Lincoln Tariff F.C.C. No. 3, Section 8.2.2.

⁷⁷³ NYNEX Direct Case, Appendix 6 at 2; SNET Direct Case at 15; Pacific Direct Case at 68; Nevada Direct Case at 18; Lincoln Direct Case at 16.

⁷⁷⁴ *Id.*

⁷⁷⁵ NYNEX Direct Case, Appendix G at 2.

⁷⁷⁶ Pacific Direct Case at 70.

⁷⁷⁷ Lincoln Direct Case at 16.

⁷⁷⁸ *Id.*

intentions to terminate.⁷⁷⁹ Rochester states that its tariff does not contain termination notification provisions specifically applicable to expanded interconnection and that interconnectors may terminate an interconnection arrangement under "standard connection and disconnection intervals."⁷⁸⁰

188. NYNEX argues that its termination provisions are standard commercial terms and objects to designating particular breaches "material" on the ground that a party would have little or no remedy for breaches that are not material.⁷⁸¹ SNET and Rochester state that their provisions permitting termination have been in effect for their other access services, and Rochester argues that applying different termination standards to expanded interconnection customers that apply to its other access services would be problematic and raise significant discrimination concerns.⁷⁸² Pacific claims that the risk of termination is the only method it can use to ensure compliance with its tariff.⁷⁸³ According to Nevada and Pacific, LECs should only be prohibited from terminating service when it would violate the law to terminate the service of a particular interconnector.⁷⁸⁴ Lincoln states that termination of a collocation arrangement for tariff violations is an effective and efficient method of protecting the public network.⁷⁸⁵

189. Pacific states that limited notice is reasonable in cases of a security violation because of the potentially serious impact a security breach may have on Pacific, its personnel, ratepayers and other collocation customers.⁷⁸⁶ Pacific argues that the 30-day notice it requires from its customers seeking to terminate a collocation arrangement is consistent with what is required of its other access customers, and it is reasonable because physical collocation is offered on a month-to-month basis.⁷⁸⁷

190. Oppositions. Teleport argues that LECs should not be allowed to terminate collocation arrangements "unless there is a material and serious breach of relevant tariff

⁷⁷⁹ SNET Direct Case at 15.

⁷⁸⁰ Rochester Direct Case at 9.

⁷⁸¹ NYNEX Direct Case, Appendix H at 2.

⁷⁸² SNET Direct Case at 16; Rochester Direct Case at 9-10.

⁷⁸³ Pacific Direct Case at 71-72.

⁷⁸⁴ Nevada Direct Case at 20; Pacific Direct Case at 74.

⁷⁸⁵ Lincoln Direct Case at 17.

⁷⁸⁶ Pacific Direct Case at 69.

⁷⁸⁷ *Id.* at 70-71.

provisions."⁷⁸⁸ Teleport states that the Commission should review any such action, perhaps through a Section 208 process, during which service should continue pending resolution of Section 208 proceeding, subject to reasonable requirements set by the Commission.⁷⁸⁹ Teleport also contends that the LECs should be required to provide evidence that they routinely terminate other interstate access services for the same type of tariff violation.⁷⁹⁰

191. ALTS contends that no LEC should have the right to either suspend service, reclaim space, or evict a collocator for any breach other than a material breach or a breach involving nonpayment or active interference in the ability of the LEC to provide its services.⁷⁹¹ ALTS also argues that unless an interconnector has breached a tariff provision, LECs that reclaim an interconnector's space should provide ample notice and full reimbursement of costs, and avoid disrupting the collocator's provision of service to its end users.⁷⁹² ALTS contends that Pacific's proposal for 15 days' notice to cure an alleged breach is unjustified.⁷⁹³ Teleport states that all LECs should be required to provide notice within a reasonable period of time before instituting any important changes in service. Teleport argues that Pacific should, therefore, be required to remove its tariff provisions that allow for immediate service termination without notice in the event of security breaches or violations of the law, as defined by Pacific.⁷⁹⁴

192. Rebuttals. Pacific emphasizes that its "immediate termination" provision applies only to "serious" breaches of security and reiterates that if certain tariff provisions are arbitrarily classified as nonmaterial, it would not have any means of assuring compliance with those provisions. In addition, Pacific notes that interconnectors may avoid or rectify breaches through compliance with Pacific's tariff provisions.⁷⁹⁵ Pacific states that neither ALTS nor Teleport offer specific standards for determining which tariff violations warrant termination.⁷⁹⁶ Pacific objects to Teleport's suggestion that the Commission require LECs to continue to provide interconnection, pending completion of a Section 208 proceeding, arguing that permitting the filing of a Section 208 action to operate as a bar against termination would

⁷⁸⁸ Teleport Opposition, Appendix B at 13.

⁷⁸⁹ *Id.*

⁷⁹⁰ *Id.*

⁷⁹¹ ALTS Opposition at 36.

⁷⁹² *Id.*

⁷⁹³ *Id.* at 36.

⁷⁹⁴ Teleport Opposition, Appendix B at 11.

⁷⁹⁵ Pacific Rebuttal at 51-52.

⁷⁹⁶ *Id.* at 52-53.

simply invite groundless actions by customers to delay termination.⁷⁹⁷ Pacific also maintains that despite ALTS's assertion that its 15-day written notice provision would have an adverse impact on customers, Pacific has no other means of securing compliance with its tariff requirements.⁷⁹⁸

6. Catastrophic Loss

193. Direct Cases. Of the six LECs currently offering physical collocation, only Lincoln and NYNEX have included provisions governing catastrophic loss in their expanded interconnection tariff. When damage to the central office can be repaired, these carriers state that they will repair the damage as quickly as possible, and that fees charged to the interconnector will be apportioned according to the amount of usable floor space until the repair is completed.⁷⁹⁹ In the event that the central office is damaged extensively and must be abandoned, NYNEX may terminate the interconnection arrangement on 90 days' notice; Lincoln will terminate the interconnection agreement on 60 days' notice.⁸⁰⁰ Nevada states that the provisions in its general access tariff that govern manmade and natural disasters also apply to its interconnection tariff.⁸⁰¹

194. Lincoln argues that if neither the interconnector nor the LEC is responsible for causing the catastrophic event, each party should be responsible for repairing its own facilities, but if the interconnector is responsible for damage to the central office, the interconnector should pay for restoration of Lincoln's property, the property of its other customers, and its own property.⁸⁰² Lincoln also states that it will not waive nonrecurring charges for creation of a new space following an emergency, and argues that interconnectors should be required to pay for temporary collocation space during reconstruction of the central office space. Otherwise, Lincoln contends that it would incur significant additional expense without assurance of receiving compensation for the temporary space once interconnectors reoccupy their original space.⁸⁰³ Lincoln agrees that if it is unable to repair the original interconnection space within 90 days of the catastrophic event, the interconnector should be

⁷⁹⁷ *Id.*

⁷⁹⁸ *Id.* at 50.

⁷⁹⁹ NYNEX Direct Case, Appendix I at 1, *citing* NYNEX Tariff No. 1, Section 28.7.5; Lincoln Tariff F.C.C. No. 3, Section 8.2.5 (G).

⁸⁰⁰ NYNEX Direct Case, Appendix I at 1, *citing* NYNEX Tariff No. 1, Section 28.7.5; Lincoln Tariff F.C.C. No. 3, Section 8.2.5 (G).

⁸⁰¹ Nevada Direct Case at 21-22.

⁸⁰² Lincoln Direct Case at 19-21.

⁸⁰³ *Id.* at 20.

allowed to move to another central office.⁸⁰⁴

195. NYNEX states that the Commission should not require LECs to provide alternative facilities for expanded interconnection in case of a catastrophic event with a specified period of time. Rather, NYNEX urges the Commission to permit the parties to work together to relocate the interconnector as quickly and as reasonably as possible.⁸⁰⁵ NYNEX states that if it is responsible for the loss, it will cover most relocation expenses, including relocating the multiplexing node enclosure, POT and associated NTC cabling. NYNEX argues, however, that other relocation expenses should be borne by the insured interconnector.⁸⁰⁶

196. SNET, NYNEX, Rochester, Nevada, and Pacific argue that it is impossible to specify a precise amount of time required for relocation because each situation is unique and the length of time required to implement a relocation depends on many variables.⁸⁰⁷ Nevada argues that any mandate requiring Nevada to reestablish service within a specific amount of time following a catastrophic event may force Nevada to make uneconomic decisions regarding repair or reconstruction, may prohibit Nevada from properly recovering charges attributable to customers, and may not serve the needs of the interconnector.⁸⁰⁸

197. Pacific asserts that where it is feasible and makes economic sense to repair the collocater's space, it will replace only the equipment and facilities for which it is responsible, and that replacement costs of facilities and equipment belonging to the interconnector would be covered by the interconnector's insurance.⁸⁰⁹ Pacific also states that it may not be feasible to relocate an interconnector in another central office because of lack of available space for collocation or because the space that is available may not be suitable for the interconnector's needs.⁸¹⁰ Pacific further argues that LECs should not be required to restore physical collocation, particularly if this effort would divert the resources needed to restore basic exchange services.⁸¹¹

⁸⁰⁴ *Id.*

⁸⁰⁵ NYNEX Direct Case, Appendix I at 3.

⁸⁰⁶ *Id.* at 2.

⁸⁰⁷ SNET Direct Case at 17; NYNEX Appendix I at 1-3; Rochester Direct Case at 1; Nevada Bell Direct Case at 21; Pacific Bell Direct Case at 75.

⁸⁰⁸ Nevada Direct Case at 22.

⁸⁰⁹ Pacific Direct Case at 76.

⁸¹⁰ *Id.* at 77.

⁸¹¹ *Id.* at 75-78.

198. SNET states that it would work with customers to restore space at no charge when it is reasonable to do so, but that, in a situation where a central office is destroyed and the customer wished to collocate in a different office, SNET would charge such customers a space preparation charge.⁸¹² If the customer causes the catastrophic loss, SNET asserts, the customer should be liable for all resulting damages and costs.⁸¹³

199. Oppositions. ALTS argues that, in the event of catastrophic loss, the LECs should be obligated to give interconnectors early notice of their plans to rebuild the central office and that LECs, not interconnectors, should be required to pay for damages that are caused by LECs.⁸¹⁴ Teleport argues that all LECs should be required to provide notice of relocation in the event of catastrophic loss within a reasonable period of time.⁸¹⁵ Teleport notes that other LECs have not objected to Ameritech's proposed 30-day notice period in the event a central office is damaged has not been protested by other LECs.⁸¹⁶ Teleport urges the Commission to adopt a standard requiring the interconnector's space to be returned to service as promptly as that of other access customers.⁸¹⁷

200. Rebuttals. Pacific responds that Ameritech's proposed 30-day notice period is appropriate for all carriers.⁸¹⁸ Pacific objects to "arbitrary" notification dates, arguing that catastrophic events are likely to vary among the different geographic areas served by different exchange carriers.⁸¹⁹ Pacific further asserts that it has a "compelling service incentive" to determine as promptly as practicable whether to rebuild an end office.⁸²⁰

201. Pacific also objects to Teleport's suggestion that the Commission require LECs to return service to interconnectors at the same time the LEC's other access customers are returned to service.⁸²¹ According to Pacific, restoration of collocation space may require more extensive repairs than those required to restore the LEC's facility. In such circumstances,

⁸¹² SNET Direct Case at 17.

⁸¹³ *Id.*

⁸¹⁴ ALTS Opposition at 36-37.

⁸¹⁵ Teleport Opposition, Appendix B at 14.

⁸¹⁶ *Id.*

⁸¹⁷ *Id.*

⁸¹⁸ Pacific Rebuttal at 54.

⁸¹⁹ *Id.* at 55.

⁸²⁰ *Id.*

⁸²¹ Pacific Rebuttal at 56 n.100.

argues Pacific, it would be unreasonable to deny service to all of its customers until collocation space can be repaired.⁸²² Further, in response to ALTS, Pacific claims its tariff clearly delineates Pacific's liability for physical damages directly and primarily caused by its negligence, and for interruptions of service and interference with facilities due to willful misconduct.⁸²³

7. Relocation

202. Direct Cases. NYNEX states that it retains the right to relocate an interconnector's nodes if required to fulfill legal obligations, upon a taking by eminent domain, if necessary to install additional facilities, or in an emergency.⁸²⁴ Nevada states its tariff does not authorize it to relocate an interconnector, but that if relocation is necessary because of unexpected demand, Nevada will amend its tariff to permit relocation under specified conditions.⁸²⁵ Pacific states that it has not attempted to specify all of the conditions under which it would be necessary to relocate an interconnector, but that such circumstances would include unexpected growth, technological or regulatory changes, "or other developments that are inherently unforeseeable."⁸²⁶ Rochester states that it does not reserve the right to unilaterally relocate an interconnector's equipment and that it would expect to resolve such issues through good faith negotiation with the interconnector.⁸²⁷ Lincoln's tariff states that relocation of an interconnector will be required only if there is no other alternative.⁸²⁸ SNET's tariff does not specify the conditions under which it would require a customer to move to a different space.⁸²⁹

203. NYNEX states that it will provide the interconnector advance notice in all cases, except emergencies, but does not specify the length of advance notice.⁸³⁰ In an emergency, NYNEX states that it will use "reasonable efforts" to give advance notice.⁸³¹

⁸²² *Id.*

⁸²³ *Id.* at 56 n.101.

⁸²⁴ NYNEX Direct Case, Appendix J at 1-2.

⁸²⁵ Nevada Direct Case at 22-23.

⁸²⁶ Pacific Direct Case at 79.

⁸²⁷ Rochester Direct Case at 11.

⁸²⁸ Lincoln Direct Case at 22, *citing* Tariff F.C.C. No. 3, Sections 8.2.2, 8.2.11 (J)(2).

⁸²⁹ SNET Direct Case at 17.

⁸³⁰ *Id.*

⁸³¹ *Id.*

Lincoln's tariff does not specify a notice period, but it states that it will negotiate a schedule with the interconnector.⁸³² Lincoln's tariff states that "under a 'force majeure' situation, the delayed party shall give immediate notice to the other."⁸³³ Pacific states that it provides 90 days' written notice before relocating customers within the same central office, and if Pacific requires relocation it will provide reimbursement for all reasonable costs incurred.⁸³⁴ Nevada provides 60 days notice and imposes the same requirement on interconnector-customers that wish to relocate.⁸³⁵ SNET provides six months' notice to the customer when its equipment must be relocated.⁸³⁶

204. NYNEX's tariff permits it to charge the interconnector for relocation in the event of an emergency caused by the customer, its agents, or contractors.⁸³⁷ If a customer requests relocation, Pacific states that, "if feasible," it will provide for such relocation and will impose ICB charges on the interconnector.⁸³⁸ SNET states that although its tariff does not so specify, it would not apply charges if it initiated the move.⁸³⁹ Lincoln states that it would require compensation for any work done on the interconnector's equipment at its request.⁸⁴⁰

205. Oppositions. ALTS argues that, unless extreme circumstances cause the relocation, no relocation should be permitted without reasonable notice.⁸⁴¹ Teleport states that relocation of interconnectors' transmission equipment has the potential to produce serious disruptions in customer service, and argues that, barring legitimate catastrophic emergencies, LECs should provide interconnectors with a minimum of six months advance notice for all moves to ensure a seamless transfer of service.⁸⁴²

206. Teleport recommends that disputed relocations be referred to the Commission

⁸³² Lincoln Direct Case at 22.

⁸³³ *Id.*

⁸³⁴ *Id.*

⁸³⁵ Nevada Direct Case at 18.

⁸³⁶ SNET Direct Case at 17.

⁸³⁷ NYNEX Direct Case, Appendix J at 2.

⁸³⁸ *Id.*

⁸³⁹ SNET Direct Case at 18.

⁸⁴⁰ Lincoln Direct Case at 22.

⁸⁴¹ ALTS Opposition at 37 n.55.

⁸⁴² Teleport Opposition, Appendix B at 16-17.

for resolution before a change can be made in the collocation arrangement and argues that LECs be required to show that relocation of the interconnector is the least intrusive way to resolve the LEC's alleged space problem.⁸⁴³ In addition, Teleport argues that LECs should be obligated to conduct relocations in a manner that eliminates the possibility that interconnector-customers will experience a disruption in service.⁸⁴⁴ Teleport further proposes that, with the exception of an authorized interconnector eviction, LECs should be required to reimburse the interconnector for its reasonable costs associated with relocation in order to prevent and discourage LECs from using relocation as a tool to impede competitors.⁸⁴⁵

207. Rebuttals. Pacific responds that relocations are costly and disruptive and that it would not, therefore, relocate interconnectors without good reason.⁸⁴⁶ Pacific states that its relocation provisions relate solely to intraoffice moves involving minimal equipment and circuit design, and that 90 days' advance notice of plans to relocate is, therefore, sufficient.⁸⁴⁷ Pacific states that it cannot guarantee that service will continue to be uninterrupted during a move.⁸⁴⁸

208. NYNEX argues that formal notification periods are unnecessary, and that Teleport's proposed six months' notice for rearrangement of an interconnector's facilities will not always be possible.⁸⁴⁹ Further, NYNEX asserts that prospective interconnectors should not be required to wait six months if relocation of an existing customer's facilities will meet their needs.⁸⁵⁰ NYNEX objects to Teleport's request that the Commission require LECs to guarantee that service will not be interrupted in the event of relocation.⁸⁵¹

8. Channel Assignment

209. Direct Cases. Lincoln, Nevada, Pacific, SNET, and Rochester permit

⁸⁴³ *Id.*

⁸⁴⁴ *Id.*

⁸⁴⁵ *Id.*

⁸⁴⁶ Pacific Rebuttal at 57. Pacific notes that a move would probably require relocation of expanded interconnection cross-connect facilities as well. *Id.* at n.103.

⁸⁴⁷ *Id.* at 59.

⁸⁴⁸ *Id.* at 58-59.

⁸⁴⁹ NYNEX Rebuttal at 12-13.

⁸⁵⁰ *Id.*

⁸⁵¹ *Id.*

interconnectors to designate the cross-connect assignments for their circuits.⁸⁵² NYNEX permits interconnectors to designate circuit assignments in its New York central offices, but it retains the ability to designate circuit assignments in its New England central offices.⁸⁵³ NYNEX explains that because the channel assignment procedure is fully automated in its New England offices, interconnectors are not able to designate circuit assignments.⁸⁵⁴

210. Oppositions. ALTS argues that the LECs' responses cast doubt as to whether collocators would be permitted to control their own channel assignments.⁸⁵⁵

9. Letters of Agency

211. Direct Cases. Lincoln, NYNEX, Pacific, and Rochester indicate that they either currently accept LOAs or are willing to accept LOAs for ordering and billing for expanded interconnection services.⁸⁵⁶ Nevada states that its tariff does not authorize or prohibit the use of LOAs, and SNET states that LOAs are not applicable to the services provided by SNET.⁸⁵⁷

212. Oppositions. Teleport recommends that each LEC be required to state in its tariffs that it will accept orders for end-to-end service and installation of the cross-connect to the interconnector's space when an interconnector's customer presents a LOA from the interconnector.⁸⁵⁸

213. Rebuttals. Pacific states that it permits the cross-connect to be ordered and billed through LOAs, and claims that no party has challenged its procedures.⁸⁵⁹

10. Billing from State/Interstate Tariffs

214. Direct Cases. Lincoln, Nevada, Pacific, and SNET state that they do not tariff

⁸⁵² Lincoln Direct Case at 14; Nevada Direct Case at 15-16; Pacific Direct Case at 64; SNET Direct Case at 14; Rochester Direct Case at 8.

⁸⁵³ NYNEX Direct Case, Appendix E at 1-2.

⁸⁵⁴ *Id.*

⁸⁵⁵ ALTS Opposition at 35.

⁸⁵⁶ Lincoln Direct Case at 27; NYNEX Direct Case, Appendix N at 1; Pacific Direct Case at 85; Rochester Direct Case at 14.

⁸⁵⁷ Nevada Direct Case at 28; SNET Direct Case at 22.

⁸⁵⁸ Teleport Opposition, Appendix B at 31.

⁸⁵⁹ Pacific Rebuttal at 71.

intrastate expanded interconnection service.⁸⁶⁰ Rochester states that interconnectors utilizing Rochester's expanded interconnection services will do so for the purpose of providing special access service, and since the ten percent rule applies to special access service, "there is no reason the 10 percent rule should not apply."⁸⁶¹ NYNEX's tariff provides that nonrecurring and recurring charges for expanded interconnection will be apportioned based on the percent interstate use (PIU) of all services provided to the customer's node; the PIU must be supplied by the customer.⁸⁶²

215. NYNEX objects to the ten percent rule.⁸⁶³ NYNEX claims that because the multiplexing node will be used for switched and special access services, both state and interstate, the PIU is a more precise and equitable method of allocating multi-jurisdictional costs and revenues.⁸⁶⁴ Moreover, NYNEX argues, the ten percent rule was developed because usage over special access facilities was not measurable.⁸⁶⁵ NYNEX states that unlike special access customers, the expanded interconnection customer controls the number of switched and special access services terminating at its multiplexing node and is, therefore, in the best position to identify the jurisdictional nature of these services.⁸⁶⁶

216. Oppositions. Teleport states that interstate traffic will usually comprise more than ten percent of interconnection traffic and that the ten percent rule is, therefore, reasonable.⁸⁶⁷ According to Teleport, NYNEX's plan is too complicated and might create an incentive for parties to report all traffic as interstate to avoid the difficulties of using NYNEX's method.⁸⁶⁸

217. Rebuttals. NYNEX responds that because the multiplexing node will be used for both state and interstate switched access services, as well as for special access services, the use of a PIU is the appropriate mechanism for jurisdictional revenue and cost allocation for

⁸⁶⁰ Lincoln Direct Case at 26; Nevada Direct Case at 28; Pacific Direct Case at 85; SNET Direct Case at 21.

⁸⁶¹ Rochester Direct Case at 13. The "ten percent rule" requires LECs to assign 100 percent of the costs of a special access line to interstate jurisdiction if more than ten percent of the traffic on the line is interstate.

⁸⁶² NYNEX Direct Case, Appendix M at 1.

⁸⁶³ *Id.*

⁸⁶⁴ *Id.* at 2.

⁸⁶⁵ *Id.* at n.4.

⁸⁶⁶ *Id.*

⁸⁶⁷ Teleport Opposition, Appendix B at 28-29.

⁸⁶⁸ *Id.*

expanded interconnection.⁸⁶⁹ Pacific recommends that the Commission defer resolution of this issue until both special access and switched access issues can be addressed.⁸⁷⁰

11. Payment of Taxes

218. Direct Cases. Lincoln requires interconnectors to pay all taxes promptly, and to provide Lincoln with appropriate documentation that they have done so.⁸⁷¹

219. Oppositions. Teleport contends that such tax provisions are unnecessary and should be removed from expanded interconnection tariffs because federal and state statutes include sufficient enforcement provisions to ensure collection of interconnectors' taxes and no party has demonstrated that a tax dispute between an interconnector and a taxing authority could have an adverse impact on a LEC.⁸⁷²

⁸⁶⁹ NYNEX Rebuttal at 10.

⁸⁷⁰ Pacific Rebuttal at 70-71.

⁸⁷¹ Lincoln Direct Case at 29.

⁸⁷² Teleport Opposition, Appendix B at 35.